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Remarks

Claims 1-3, 5-12, and 14-16 remain pending in the application.

Claim Rejections - 35 U.S.C. § 112

Claims 1-3, 5-12, and 14-16 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner asserts the claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor, at the time of the application was filed, had possession of the claimed invention. The Examiner specifically addresses the claim language "about 14-20%." However, on page 2 of the application, the Applicant specifically states "Saké can be produced with alcohol contents as high as 20% although the beverage is usually diluted somewhat to a 14% level." Therefore, it appears that the application fully supports the claim language.

The Examiner further rejects claim 1 as being indefinite because he asserts the scope of the phrase "about 14-20%" is unknown. The fact that claim language, including terms of degree, may not be precise, does not automatically render the claim indefinite under 35 U.S.C. 112, second paragraph. *Seattle Box Co., v. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 221 USPQ 568 (Fed. Cir. 1984). Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification. See also MPEP § 2173.05(b). Further, the term "about" was held

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to be clear, but flexible. *Ex parte Eastwood*, 163 USPQ 316 (Bd. App. 1968). Similarly, in *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), the court held that a limitation defining the stretch rate of a plastic as "exceeding about 10% per second" is definite because infringement could clearly be assessed through the use of a stopwatch. Here, the Applicant is using "about 14-20%" to particularly point out the typical alcohol content of saké. It is well known by those of ordinary skill in the art the typical alcohol content of saké ranges between approximately 14-20%. Since the alcohol content range of sake is well understood in the art and this range is described in the specification, the Applicant believes the use of "about 14-20%" in the claims is definite. Therefore, withdrawal of this rejection is respectfully requested.

Claim Rejections - 35 U.S.C. § 103

Claims 1-3, 5-12, and 14-16 are rejected under 35 U.S.C.(a) as being unpatentable over Matsuura et al.(Japanese Patent 10262641) in view of Nagao et al. (Japanese Patent 7059553). The Applicant respectfully traverses the rejection.

The Examiner is ignoring the limitations of the Applicant's claims. The Applicant's claimed invention is patentably distinct from the prior art. The Examiner is citing Matsuura which is directed towards mirin. Mirin is a sweet rice wine for cooking and has a low alcohol content. The Applicant's invention is directed towards drinking saké with a high alcohol content. Mirin and saké have different alcohol contents and are used for different purposes. Nagao discloses a pasteurization process for a saké and fruit juice combination. The Applicant's

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claimed invention is not directed towards a saké and fruit juice combination. The applicant's invention is directed towards a saké and finely divided fruit combination. The Applicant's combination is distinguishable from Nagao. Furthermore, neither reference disclose the addition of preservatives beyond the naturally occurring preservatives.

The Examiner is ignoring the fact the prior art teaches away from the addition of preservatives in sake, beyond the naturally alcohol content and acidic content of the fruit. Further, the Examiner is ignoring the unsuggested combination of adding a preservative in addition to the alcohol content of the sake and any acidic content of the fruit to produce fully stabilized flavored sake. Because it is culturally unacceptable and illegal to add any preservatives to sake in Japan, using preservatives in this manner is not practiced and the effects are not known. The Examiner asserts it is well known that wines commonly use preservatives. The Examiner is failing to distinguish between the use of preservatives in wines made from fruit juices and those made from rice, saké. There is a significant difference in the arts vis-à-vis the need and acceptance of preservatives, as described in Applicants' prior response. Also, there is no reason to believe that the outcome of adding preservatives as claimed to saké would be palatable or acceptable. The addition of claimed preservatives could have easily made an undrinkable combination. The Applicants' method is new and unique to the manufacturing and flavoring of saké. For at least these reasons, the Applicants' claimed invention is non-obvious. Therefore, withdrawal of this rejection is respectfully requested.

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The Applicants have enlisted the help of recognized sake brewer Abednego Barnes to help establish the lack of motivation in the art to combine the known processes of pasteurization, alcoholic limitation of organisms, and preservative use. MORE WHEN WE ARE SETTLED.

Conclusion

This response has addressed all of the Examiner's grounds for rejection. The rejections based on prior art have been traversed. Reconsideration of the rejections and allowance of the claims is requested.

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